

**Zoning Ordinance Approval  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**



**AGENDA ITEM NO.: 38  
AGENDA DATE: Thu 05/19/2005  
PAGE: 1 of 1**

**SUBJECT:** C14-04-0058 - Sahara Club Extension - Approve third reading of an ordinance amending Chapter 25-2 of the Austin City Code by zoning property locally known as 900 Braker Lane (Walnut Creek Watershed) from community commercial (GR) district zoning to commercial-liquor sales (CS-1) district zoning with conditions. Conditions met as follows: Conditional overlay and restrictive covenant incorporates the conditions imposed or accepted at first ordinance reading. Second reading on April 7, 2005. Vote 6-1, Council Member Slusher - Nay. Applicant: Walnut Ridge Shopping Center (Thomas C. Calhoun). Agent: Turnkey Properties (Victorious B. Giraud) and Eddie Hurst. City Staff: Sherry Sirwaitus, 974-3057.

**REQUESTING** Neighborhood Planning  
**DEPARTMENT:** and Zoning

**DIRECTOR'S**  
**AUTHORIZATION:** Greg Guernsey

### **THIRD READING SUMMARY SHEET**

**ZONING CASE NUMBER: C14-04-0058**

**REQUEST:**

Approve third readings of an ordinance amending Chapter 25-2 of the Austin City Code, rezoning the property locally known as 900 East Braker Lane from GR, Community Commercial District, zoning to CS-1, Commercial-Liquor Sales District, zoning with conditions. In addition, the applicant has agreed to a public restrictive covenant with the City in which he would not object to a rezoning of the property to GR if the cocktail lounge use is discontinued for 90-days.

**PROPERTY OWNER: Walnut Ridge Shopping Center (Thomas C. Calhoun)**

**AGENT: Turnkey Properties (Victorious B. Giraud) and Eddie Hurst**

**ISSUES:**

The staff facilitated a meeting between the applicant and Lester Johnson, the president of the Northeast Walnut Creek Neighborhood Association, on April 20, 2005. During this meeting, Eddie Hurst (the new agent) offered to place additional conditions into a private restrictive covenant agreement that would address security, barricades to direct traffic, adequate parking, limits on the renewal of a Conditional Use Permit, and enforcement of the private covenant. Mr. Hurst presented this private agreement to the neighborhood association the following week for their review (Revised Private Restrictive Covenant Agreement-Attachment K). The neighborhood association has stated that they are not confident in their ability to enforce this private covenant with the applicant and therefore cannot agree to it.

At the request of Council Member Thomas, the staff conducted additional research on the history of the expansion of the Sahara Club bar. According to the Watershed Protection and Development Review Department, Mr. Greene was informed in February of 2003 that he needed to request a change of zoning before he submitted development plans. However, Mr. Victor Giraud (previous agent for the case) submitted for a building permit anyway on September 19, 2003. An asbestos survey for the property was required but it was not conducted because the applicant did not pay the fees. The staff rejected the building permit application. Therefore, the plan review has expired for these plans and the applicant will have to resubmit them. In their comments, the building permit review staff added that the building plans were submitted with an approved red stamped site plan (SPC-02-0013A) that showed the extension of the Sahara Nightclub into the adjacent space. The staff does not know how this occurred because the site plan review staff previously rejected the expansion application based on the need for appropriate zoning.

At the September 30, 2004 City Council meeting, the applicant requested an additional postponement to November 18, 2004. Mr. Judson Green stated he had had a discussion with the neighborhood during a Council recess and both parties agreed to a further postponement so that they could continue to negotiate issues regarding the case. Through a motion made by Mayor Pro Tem Jackie Goodman and seconded by Council member Betty Dunkerley, the Council postponed the case until the November 18<sup>th</sup> meeting date.

The staff received a letter from the applicant on August 13, 2004, requesting a postponement of the case at City Council to the September 30, 2004 (Postponement Letter- Attachment D). The applicant would like to meet with the neighborhood on Saturday, September 18, 2004 to discuss his proposal.

On May 18, 2004, the Zoning & Platting Commission asked the staff to research the amount of parking spaces that would be required if the Sahara Club was expanded by the proposed 0.103 acres (5,683 sq. ft.). The staff has determined that the applicant would now need 140 parking spaces. The applicant is required to have 1 space for every 50 square feet of building area (based on LDC requirements for a 2500-10000 sq. ft cocktail lounge use). With the current parking spaces available on the site (269 spaces overall for the entire shopping center), the applicant would be 44 parking spaces short and could not meet this requirement. It may be possible for the applicant to conduct a shared parking analysis to attempt to meet the additional 140 required parking spaces for the proposed expansion of the Sahara Club. If the CS-1 zoning is granted for this site, the applicant would be required to address this parking issue during the Conditional Use Permit process for the new/additional 0.0103 acres of cocktail lounge use.

A notice of violation for this site was sent to the owner of the Walnut Ridge Shopping Center, Thomas C. Calhoon, on April 27, 2004, because the Sahara nightclub has expanded into an old restaurant area (vacant suite) to the east without obtaining permits, a rezoning, a new Conditional Use Permit, and a certificate of occupancy from the City. The Sahara Club cocktail lounge is not operating according to their existing CUP (SPC-02-0013A) because they have removed a wall separating the business from the vacant restaurant space, which does not have the appropriate zoning to allow for alcohol sales.

#### **DEPARTMENT COMMENTS:**

The property in question is a suite located within a retail shopping center fronting Braker Lane. The applicant is requesting CS-1 zoning for this site to expand an existing cocktail lounge/bar use to the east.

Last year the owner of the bar, Judson Green, was granted a CUP for a 1,300 sq. ft. cocktail lounge in a CS-1 zoned space within the retail shopping center (Case SPC-02-0013A-Attachment A). The owner then decided to expand the cocktail lounge business into an old restaurant area, formerly known as the Tropical Heat Cafe. He applied for building permits for this "renovation" but was denied because the old restaurant area is zoned GR, which does not permit a cocktail lounge use. Since that time, Mr. Green has knocked down the wall between the bar and the vacated restaurant without permits from the City and expanded his facility. Mr. Green applied to the TABC for a mixed beverage/late night hours permit for this site and was denied because of inappropriate zoning. The city has informed the Mr. Green that he will need to rezone the property in question and obtain a Conditional Use Permit for this site to come into compliance with City of Austin Code requirements.

The staff is recommending denial of the applicant's request for CS-1 zoning because the site does not meet the purpose statement for the CS-1, Commercial-Liquor Sales District. The rezoning of this site will also contribute to the over zoning of the area. There are two other CS-1 zoned properties to the west of the existing Sahara Club within the Walnut Ridge Shopping Center. One is being utilized for a liquor store and the other (larger site) is currently used as a discount retail store.

The applicant agrees with the City Council's recommendation at 1<sup>st</sup> reading.

**DATE OF FIRST READING/VOTE:** November 18, 2004/ Approved CS-1 on 1<sup>st</sup> reading  
(Vote: 5-2, Wynn, Slusher-No), with following requirements:

- 1) Create a rollback public restrictive covenant stating that if the use ceases in 90 days the property would be rolled back to GR zoning;
- 2) Encourage the applicant and neighborhood work out some private restrictive covenant agreement prior to 2<sup>nd</sup>/3<sup>rd</sup> readings.

April 7, 2005/ Approved 2<sup>nd</sup> reading only. Applicant asked to continue working with the neighborhood (6-1, Slusher-No)

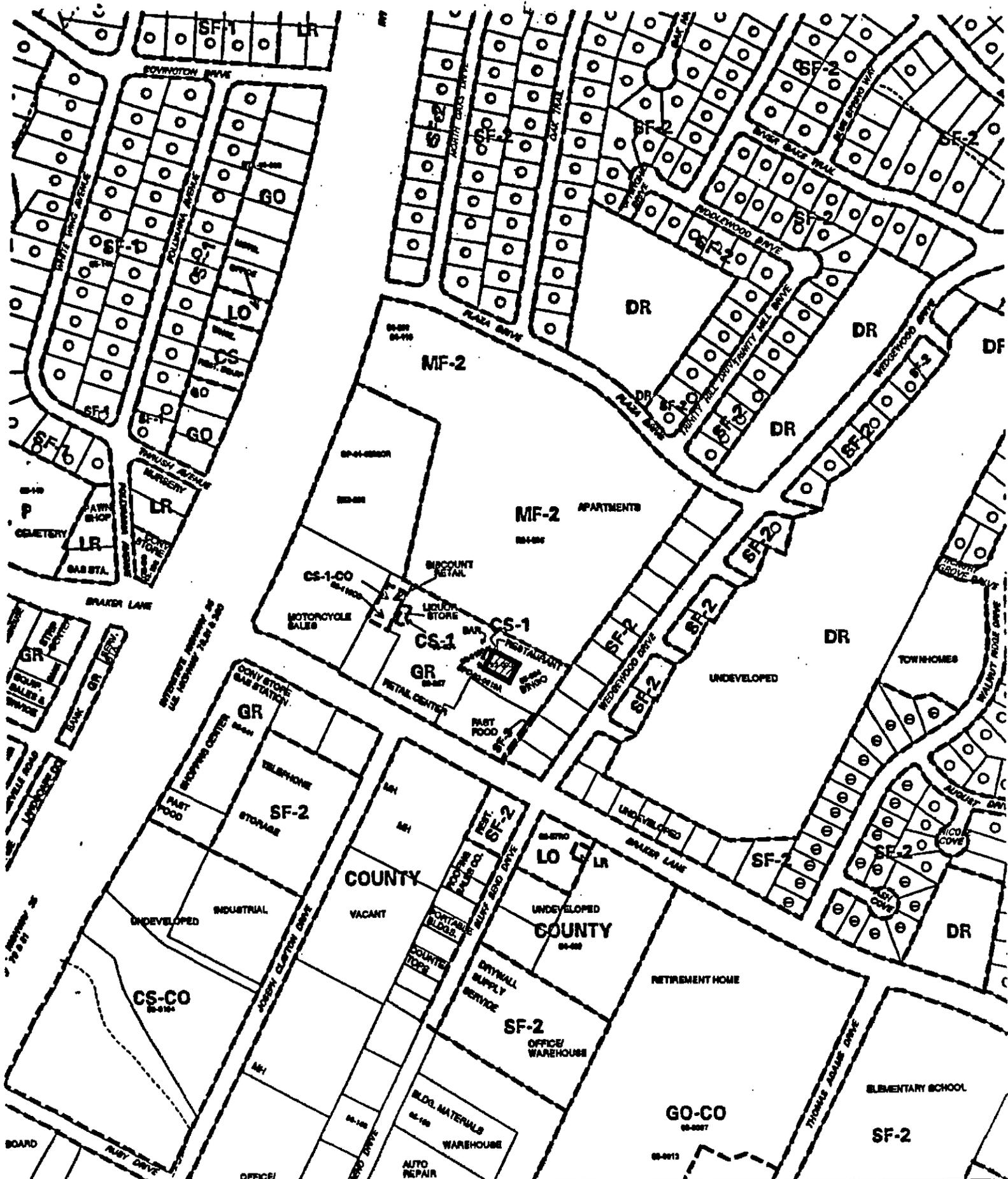
**CITY COUNCIL DATE:** May 19, 2005

**CITY COUNCIL ACTION:**

**ASSIGNED STAFF:** Sherri Sirwaitis

**PHONE:** 974-3057

sherri.sirwaitis@ci.austin.tx.us



**SUBJECT TRACT**  
**PENDING CASE**  
**ZONING BOUNDARY**  
**CASE MGR: S. GAGER**

**CASE #: C14-04-0058**  
**ADDRESS: 900 E BRAKER LANE**  
**SUBJECT AREA (acres): 0.130**

**ZONING EXHIBIT B**

**DATE: 04-04**  
**INTLS: SM**

**CITY GRID REFERENCE NUMBER**  
**M31**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 900 EAST BRAKER LANE FROM COMMUNITY COMMERCIAL (GR) DISTRICT TO COMMERCIAL LIQUOR SALES (CS-1) DISTRICT.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from community commercial (GR) district to commercial-liquor sales (CS-1) district on the property described in Zoning Case No. C14-04-0058, on file at the Neighborhood Planning and Zoning Department, as follows:

A 5,857 square foot tract of land, more or less, out of Lot 2, Braker Lane Center-Section One, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this ordinance,

locally known as 900 East Braker Lane, in the City of Austin, Travis County, Texas, and generally identified in the map attached as Exhibit "B"

**PART 2.** This ordinance takes effect on \_\_\_\_\_, 2005.

**PASSED AND APPROVED**

2005

§  
§  
§

Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Brown  
City Clerk

FIELD NOTES  
FOR  
JUDSON GREENE

5857 SQUARE FOOT TRACT

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND, BEING A PORTION OF LOT 2, RESUBDIVISION OF LOT 1, BRAKER LANE CENTER-SECTION ONE, AS RECORDED IN PLAT BOOK 90, PAGE 267, PLAT RECORDS, TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at an iron rod found at the most Easterly Southeast corner of Lot 2, being the Northeast corner of Lot 3, Resubdivision of Lot 1, Braker Lane Center-Section One, as recorded in Plat Book 90, Page 267, Plat Records, Travis County, Texas;

THENCE N 36°22'55"W for a distance of 141.78 feet to a point for the Southeast corner and PLACE OF BEGINNING hereof;

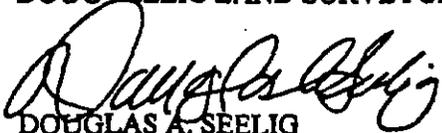
THENCE N 60°19'W for a distance of 89.57 feet to a point for the Southwest corner hereof;

THENCE N 29°41'E for a distance of 65.24 feet to a point for the Northwest corner hereof;

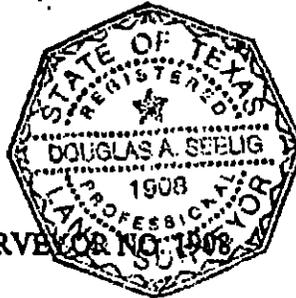
THENCE S 60°25'E for a distance of 89.76 feet to a point for the Northeast corner hereof;

THENCE S 29°51'W for a distance of 65.40 feet to the PLACE OF BEGINNING and containing 5,857 square feet of land, more or less.

AS SURVEYED BY:  
DOUG SEELIG LAND SURVEYORS, P.C.

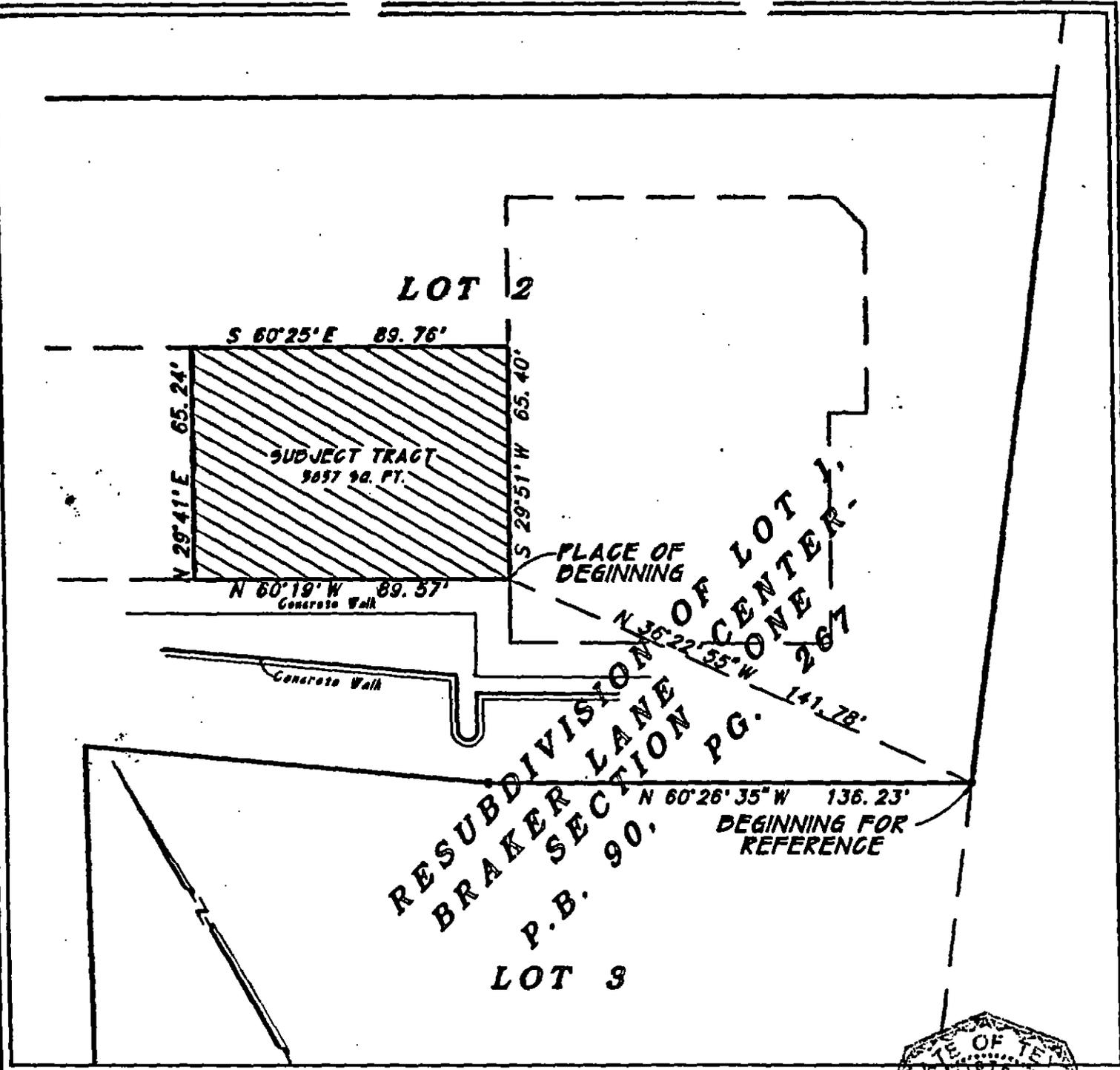


DOUGLAS A. SEELIG  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 1908  
3802 MANCHACA ROAD  
AUSTIN, TEXAS 78704  
March 25, 2004



Work Order No. 21473

EXHIBIT A



**LEGEND**

- Conc. Monument Found
- ⊗ Iron Pipe Found
- Iron Rod Found
- Iron Rod Set
- ▲ Nail Found
- △ Nail Set

( ) Record Information  
 Date 3/25/04  
 Scale 1"=40'  
 Invoice No. 21473  
 Work Order No. 21473

**MAP TO  
ACCOMPANY  
FIELD NOTES**



*Douglas A. Seelig*  
**DOUGLAS A. SEELIG**  
 Registered Professional  
 Land Surveyor No. 1908

**RESTRICTIVE COVENANT**

**OWNER:** Thomas C. Calhoon

**ADDRESS:** 315 Lavaca Street, Austin, Texas 78701

**CONSIDERATION:** Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

**PROPERTY:** A 5,857 square foot tract of land, more or less, out of Lot 2, Braker Lane Center-Section One, in Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant; and

WHEREAS, the Owner, whether one or more, of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. If use of the Property as a cocktail lounge use is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to community commercial (GR) district as defined in Chapter 25-2 of the City Code. Normal seasonal cessation of a use, or temporary discontinuance for purposes of maintenance or rebuilding of the Property after damage or destruction may not be used in calculating of the period of discontinuance.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 16<sup>th</sup> day of FEBRUARY, 2005.

OWNER:

  
Thomas C. Calhoon

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 16<sup>th</sup> day of February, 2005, by Thomas C. Calhoon.



  
Notary Public, State of Texas

**FIELD NOTES  
FOR  
JUDSON GREENE**

**5857 SQUARE FOOT TRACT**

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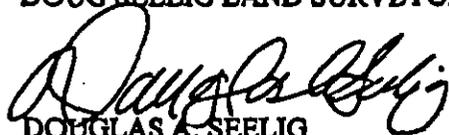
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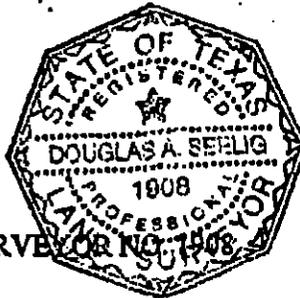
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REGISTERED PROFESSIONAL LAND SURVEYOR  
3802 MANCHACA ROAD  
AUSTIN, TEXAS 78704  
March 25, 2004**



**Work Order No. 21473**

**EXHIBIT A**

LOT 2

S 60°25'E 89.76'

N 29°41'E 65.24'

SUBJECT TRACT  
9897 90. FT.

S 29°51'W 65.40'

PLACE OF  
BEGINNING

N 60°19'W 89.57'  
Concrete Wall

Concrete Walk

RESUBDIVISION OF LOT  
BRAKER LANE CENTER  
P.B. 90. PG. 267

N 60°26'35"W 136.23'

BEGINNING FOR  
REFERENCE

RESUBDIVISION OF LOT  
BRAKER LANE CENTER  
P.B. 90. PG. 267

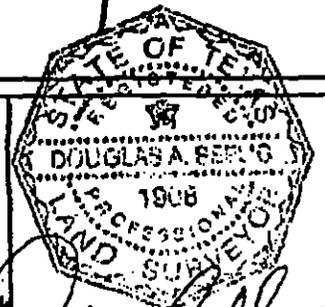
LOT 3

LEGEND

- Conc. Monument Found
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( ) Record Information  
 Date 3/25/04  
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MAP TO  
ACCOMPANY  
FIELD NOTES



DOUGLAS A. SEELIG  
Registered Professional  
Land Surveyor No. 1908

DOUG SEELIG LAND SURVEYORS, P.C.

3802 Manchaca Road - Austin, Texas 78704 - Ph. (512) 440-0222

**ZONING CHANGE REVIEW SHEET**

**CASE:** C14-04-0058

**ZAP DATE:** May 18, 2004

June 1, 2004

June 7, 2004

July 20, 2004

**ADDRESS:** 900 East Braker Lane

**OWNER/APPLICANT:** Walnut Ridge Shopping Center (Thomas C. Calhoun)

**AGENT:** Turnkey Properties (Victorious B. Giraud) and Eddie Hurst

**ZONING FROM:** GR

**TO:** CS-1

**AREA:** 0.103 acres (5,683 sq. ft.)

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends denial of the CS-1 rezoning request.

**ZONING AND PLATTING COMMISSION RECOMMENDATION:**

5/18/04: The Commission continued the case the June 1, 2004 (8-0); K. Jackson-1<sup>st</sup>, J. Martinez-2<sup>nd</sup>.

\*The public hearing was reopened for this case.

6/01/04: Approved the staff's recommendation to deny the request for CS-1 zoning (8-0, J. Pinnelli – absent); K. Jackson-1<sup>st</sup>, J. Martinez-2<sup>nd</sup>.

6/07/04: Motion made to rescind, reconsider the June 1, 2004, motion (6-2, B. Baker, C. Hammond-Nay, J. Pinnelli-absent); J. Martinez-1<sup>st</sup>, M. Whaley-2<sup>nd</sup>.

Motion made to continue case to July 20, 2004 (6-2, B. Baker, C. Hammond-Nay; J. Pinnelli-absent); J. Martinez-1<sup>st</sup>, J. Gohil-2<sup>nd</sup>.

7/20/04: Approved staff recommendation to deny CS-1 zoning (5-3, J. Gohil, J. Martinez, K. Jackson-Nay; J. Pinnelli-absent); B. Baker-1<sup>st</sup>, M. Whaley-2<sup>nd</sup>.

**ISSUES:**

The staff facilitated a meeting between the applicant and Lester Johnson, the president of the Northeast Walnut Creek Neighborhood Association, on April 20, 2005. During this meeting, Eddie Hurst (the new agent) offered to place additional conditions into a private restrictive covenant agreement that would address security, barricades to direct traffic, adequate parking, limits on the renewal of a Conditional Use Permit, and enforcement of the private covenant. Mr. Hurst presented this private agreement to the neighborhood association the following week for their review (Revised Private Restrictive Covenant Agreement-Attachment K). The neighborhood association has stated that they are not confident in their ability to enforce this private covenant with the applicant and therefore cannot agree to it.

On January 24, 2005, the staff received a fax from Eddie Hurst, the new representative for Judson Greene (the occupant of the site), stating that he and Mr. Greene had attempted to meet with Lester Johnson, representative for the Northeast Walnut Creek Neighborhood Association. According to

**Mr. Hurst, Mr. Johnson said that the neighborhood is still in opposition to the rezoning request and cannot agree to a private restrictive covenant. Mr. Hurst faxed the staff a copy of the proposed private restrictive covenant agreement, which is included with this report as Attachment J.**

**At the request of Council Member Thomas, the staff conducted additional research on the history of the expansion of the Sahara Club bar. According to the Watershed Protection and Development Review Department, Mr. Greene was informed in February of 2003 that he needed to request a change of zoning before he submitted development plans. However, Mr. Victor Giraud (previous agent for the case) submitted for a building permit anyway on September 19, 2003. An asbestos survey for the property was required but it was not conducted because the applicant did not pay the fees. The staff rejected the building permit application. Therefore, the plan review has expired for these plans and the applicant will have to resubmit them. In their comments, the building permit review staff added that the building plans were submitted with an approved red stamped site plan (SPC-02-0013A) that showed the extension of the Sahara Nightclub into the adjacent space. The staff does not know how this occurred because the site plan review staff previously rejected the expansion application based on the need for appropriate zoning.**

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**EXISTING ZONING AND LAND USES:**

	ZONING	LAND USES
<i>Site</i>	GR	Cocktail Lounge/Bar
<i>North</i>	MF-2	Apartments
<i>South</i>	GR	Restaurant
<i>East</i>	GR	Bingo hall
<i>West</i>	CS-1, GR, CS-1, CS-1-CO	Cocktail Lounge/Bar, Dry Cleaners, Nail Salon, Liquor Store, Discount Retail Store

**AREA STUDY:** N/A

**TIA:** Not Required

**WATERSHED:** Walnut Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**HILL COUNTRY ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

- Northeast Walnut Creek Neighborhood Association
- River Oaks Lakes Estates Neighborhood
- North Growth Corridor Alliance
- Austin Neighborhoods Council
- NorthEast Action Group
- Taking Action Inc.

**SCHOOLS:**

Graham Elementary (approximately 1500 feet to southeast)  
 Pflugerville #4 Middle School  
 Dobie Middle School  
 Lanier High School

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-02-0130	CS-1 to GR	9/10/02: Approved staff's recommendation of GR zoning by consent (6-0, D. Castaneda-absent)	10/10/02: The Council had many questions about this case because the neighborhood spoke out both for and against the rezoning. The neighborhood felt the rezoning request did not cover the entire tract subject to the prior restrictive covenant (from case C14-95-0034) and stated their opposition to the pending conditional use permit for a new cocktail lounge. Sarah Crocker raised the issue regarding DAC'S approval of a site plan exemption for a cocktail lounge use and Alice Glasco explained how this error occurred. (7-0); all 3 readings
C14-02-0033	CS, GR to CS-1	4/16/02: Approved staff rec. to deny CS-1 (5-0)	5/23/02: Denied CS-1 (7-0)
C14-95-0054 "Expired"	GR to CS-1	5/23/95: Denied CS-1 as requested (6-0)	6/22/95: Motion to deny failed (2-2-1, EM/RR-no, GG-abstain), no action taken
C14-95-0034	TRA: CS to CS-1 TRB: CS to CS-1	5/9/95: Denied CS-1 (6-0)	6/1/95: Approved CS-1 w/ conditions: To approve CS-1, with a restrictive covenant that provides for rollback to GR, if cocktail use does not open within 1 year of zoning case or ceases for more than 90 days. (4-1-2, BS-no, JG/BT-abstain); 1 <sup>st</sup> reading  8/17/95: Approved CS-1 (4-1-2, BS-no, JG/BT-abstain); 2 <sup>nd</sup> reading  8/24/95: Approved CS-1 (5-1, JG-Nay); 3 <sup>rd</sup> reading
C14-88-0110	GR to CS-1	9/27/88: Grant CS-1 w/ conditional overlay	10/27/88: Approved CS-1 w/conditions; all 3 readings

**RELATED CASES:** See "Background" information

**ABUTTING STREETS:**

<b>NAME</b>	<b>ROW</b>	<b>PAVEMENT</b>	<b>CLASSIFICATION</b>
Braker Lane	100'	60'	Arterial

**CITY COUNCIL DATE:** August 26, 2004

**ACTION:** Postponed by Applicant to 9/30/04 (7-0)

September 30, 2004

**ACTION:** Postponed by Council to 11/18/04 (5-0, Alvarez & Thomas-off dias)

November 18, 2004

**ACTION:** Approved CS-1 on 1<sup>st</sup> reading (Vote: 5-2, Wynn, Slusher-No), with following requirements:  
1) Create a rollback public restrictive covenant stating that if the use ceases in 90 days the property would be rolled back to GR zoning;  
2) Encourage the applicant and neighborhood work out some private restrictive covenant agreement prior to 2<sup>nd</sup>/3<sup>rd</sup> readings.

April 7, 2005

**ACTION:** Approved 2<sup>nd</sup> reading only. Applicant asked to continue working with the neighborhood (6-1, Slusher-No)

**ORDINANCE READINGS:** 1<sup>st</sup> 11/18/04

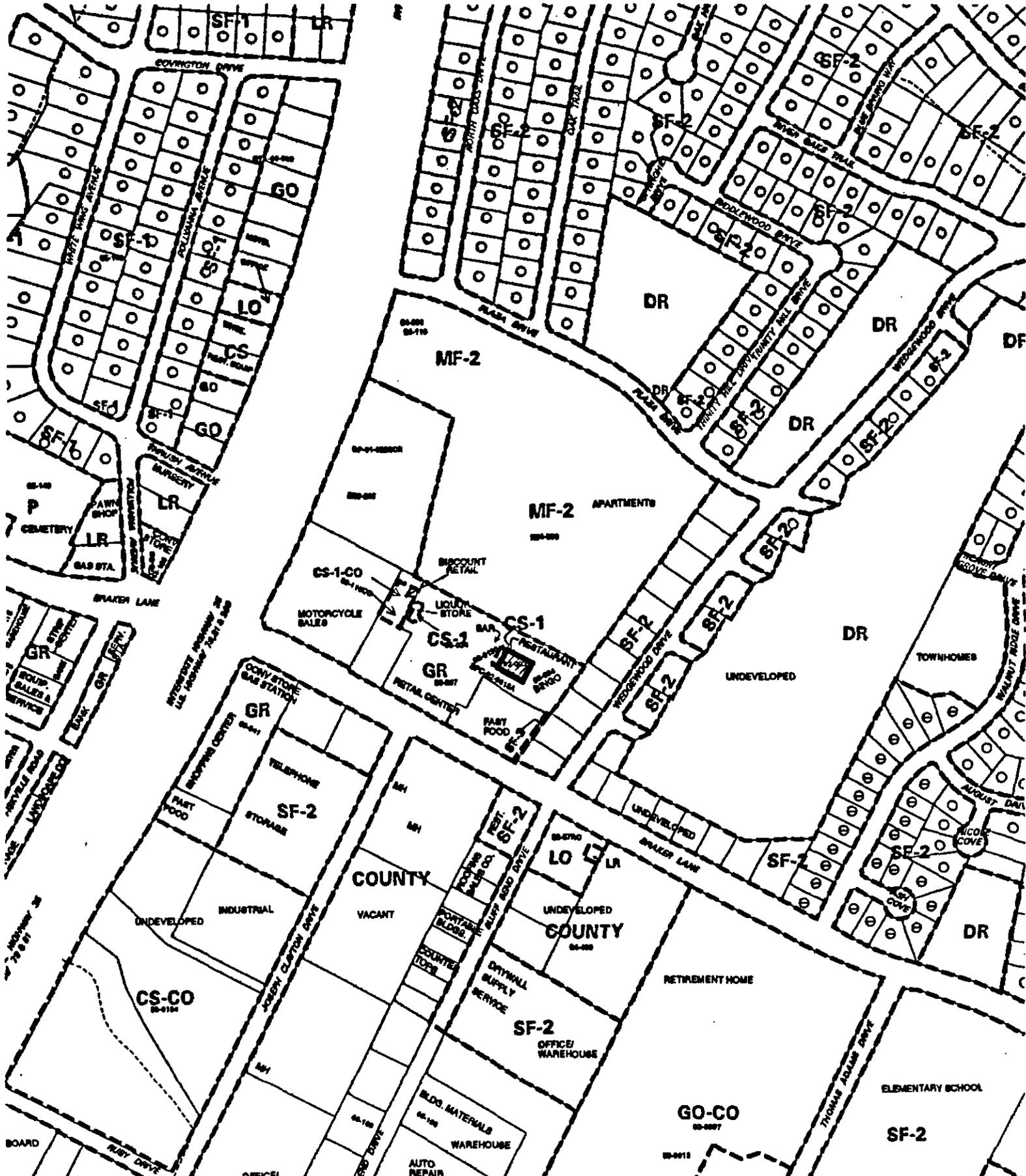
2<sup>nd</sup> 4/07/05 3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 974-3057

**EMAIL:** Sherri.Sirwaitis@ci.austin.tx.us



 1" = 400'	<b>SUBJECT TRACT</b> 	<b>ZONING</b>  DATE: 04-04 INTLS: SM	<b>CITY GRID REFERENCE NUMBER</b> M31
	<b>PENDING CASE</b> 		





## **STAFF RECOMMENDATION**

Staff recommends denial of the CS-1 rezoning request.

## **BACKGROUND**

### C14-02-0130

In August of 2002, an application was submitted requesting a rollback for a portion of a CS-1 zoned tract to GR, Community Commercial District, zoning (Zoning Case Map-Attachment B). As part of zoning case C14-95-034, there was a public Restrictive Covenant accepted by the City Council in which the owner agreed to a zoning roll back to GR for two properties if a Conditional Use Permit for a cocktail lounge was not issued within one year of the rezoning or if a cocktail lounge use ceased for more than 90 days. The down zoning of a portion of the original Tract B from case C14-95-034 to GR was recommended by the Zoning & Platting Commission on September 10, 2002 and was approved by the City Council on October 10, 2002. The remainder of Tract B is part of the Sahara Club site (CUP Case SPC-02-0013A-Attachment A).

### C14-02-0033

Rezoning case C14-02-0033 (Zoning Case Map-Attachment C) was a duplicate request of the 1995 case listed below, with the addition of an adjacent store-front to the request for CS-1 zoning. Part of the site was identified as having a zoning violation for an illegal cocktail lounge. It appears that the rezoning case was prompted by a complaint and subsequent red tag by Code Enforcement. Zoning case C14-03-0033 was denied by the Zoning and Platting Commission on April 16, 2002 and by the City Council on May 23, 2002.

### C14-95-0054

In 1995 a rezoning application was submitted for a portion of this retail center, as case C14-95-0054 (Zoning Case Map-Attachment D). The smallest portion of subject tract request was recommended by staff, but denied by Planning Commission and City Council. The development (restaurant use/bar use) existed at the time of the 1995 request and is now the vacant Tropical Heat Cafe that is part of the property under consideration in the current zoning case.

### C14-95-0034

Also in 1995, one month prior to the above case, a rezoning application for case C14-95-0034 (Zoning Case Map-Attachment E) was submitted for two other store fronts (Tract A and Tract B) within the same retail center as this property. The CS-1 for those two areas was recommended by staff, denied by Planning Commission, and approved by City Council w/conditions. The conditions included a public Restrictive Covenant that mandated a zoning roll back to GR for the two properties if a Conditional Use Permit for a cocktail lounge was not issued within one year of the rezoning or if a cocktail lounge use ceases for more than 90 days. Tract A is now a liquor store and a portion of Tract B is part of a cocktail lounge, the Sahara Club.

In accordance with the public restrictive covenant the applicant agreed not to object to a zoning roll back to GR in 1996, as CUP's were never issued for the properties within the time allotted. While the City is a party to the restrictive covenant, typically city initiated rezoning rollbacks are complaint driven or applicant requested and initiated by the Commission or Council. Over the last seven years no zoning complaints had been filed on the property. The City was not notified of the breach of the agreement stated in the covenant until a zoning case was filed in 2002 requesting additional CS-1 zoning within this retail shopping center (Case C14-02-0033 listed above).

**C14-88-0110**

This pad of CS-1 zoning has a CO limiting the site to only GR uses, and the sale of beer and wine in unopened containers for off premise consumption and revenue from the sale of non-alcoholic products must comprise at least 51% of sales and at least 51% of shelf space shall be devoted to items other than beer and wine (Zoning Case Map-Attachment F).

**BASIS FOR RECOMMENDATION**

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*

The property does not properly meet the purpose statement of the district sought. Commercial-liquor sales district is the designation for a commercial or industrial use of a service nature that has operating characteristics or traffic service requirements that are incompatible with the residential environments. Liquor sales is one of the permitted uses in a CS-1 district.

The site is adjacent to SF-2 and SF-3 zoning. There is an existing apartment complex directly to the north of the site. Commercial-liquor sales zoning is not compatible with these residential environments. In addition, the site does not meet traffic service requirements for CS-1 zoning as parking would be inadequate and a parking variance would be needed.

2. *Rezoning should not contribute to the over zoning of the area.*

The area in question has an adequate amount of CS-1, Commercial-Liquor Sales District, zoning. Currently there are three existing pad sites of CS-1 zoning located within this shopping center.

There is already a reasonable amount of CS-1 zoning in the area providing ratios of CS-1 to non CS-1 zoning similar to other retail strip centers in the City. Recommending more CS-1 zoning would contribute to over zoning the area.

**EXISTING CONDITIONS**

**Site Characteristics**

The site is currently a developed suite within a strip retail shopping center.

**Impervious Cover**

The maximum impervious cover allowed by the CS-1 zoning district would be 95%. However, because the watershed impervious cover is more restrictive than the zoning district's allowable impervious cover, the impervious cover is limited by the watershed regulations. The site is in the Walnut Creek Watershed of the Colorado River Basin, which is classified as a Suburban Watershed by Chapter 25-8 of the City's Land Development Code. Under current watershed regulations, development or redevelopment on this site will be subject to the following impervious cover limits:

<i>Development Classification</i>	<i>% of Net Site Area</i>	<i>% with Transfers</i>
Single-Family (minimum lot size 5750 sq. ft.)	50%	60%
Other Single-Family or Duplex	55%	60%

Multifamily	60%	70%
Commercial	80%	90%

In the Water Quality Transition Zones, impervious cover is limited to 30%.

**Environmental**

The site is not located over the Edward's Aquifer Recharge Zone. The site is in the Desired Development Zone. The site is in the Walnut Creek Watershed of the Colorado River Basin, which is classified as a Suburban Watershed by Chapter 25-8 of the City's Land Development Code.

According to flood plain maps, there is no floodplain within, or adjacent to the project boundary.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Under current watershed regulations, development or redevelopment on this site will be subject to the following water quality control requirements:

- Structural controls: Sedimentation and filtration basins with increased capture volume and 2 year detention.

At this time, no information has been provided as to whether this property has any pre-existing approvals that preempt current water quality or Code requirements.

**Transportation**

No additional right-of-way is needed at this time.

The trip generation under the requested zoning is estimated to be 1,680 trips per day, assuming that the site develops to the maximum intensity allowed under the zoning classification (without consideration of setbacks, environmental constraints, or other site characteristics).

A traffic impact analysis was not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 2,000 vehicle trips per day. [LDC, 25-6-113]

Capital Metro bus service is available along Braker Lane (Route #45).

There are existing sidewalks along Braker Lane.

Existing Street Characteristics:

NAME	ROW	PAVEMENT	CLASSIFICATION
Braker Lane	100'	60'	Arterial

### Right of Way

The scope of this review is limited to the identification of needs for dedication and/or reservation of right-of-way for funded Capital Improvement Program (C.I.P.) Roadway Construction Projects and Transportation Systems Management (T.S.M.) Projects planned for implementation by the City of Austin. No aspect of the proposed project is being considered or approved with this review other than the need for right-of-way for City projects. There are separate right-of-way dedication and reservation requirements enforced by other Departments and other jurisdictions to secure right-of-way for roadway improvements contained in the Austin Metropolitan Area Roadway Plan, roadway projects funded by County and State agencies, and for dedication in accordance with the functional classification of the roadway.

We have reviewed the proposed subdivision, site plan, or zoning case and anticipate no additional requirement for right-of-way dedication or reservation for funded C.I.P. or T.S.M. projects at this location.

### Water and Wastewater

The landowner intends to serve the site with City water and wastewater utilities. If water or wastewater utility improvements, or offsite main extension, or system upgrades, or utility relocation or adjustment are required, the landowner will be responsible for all costs and providing. Also, the utility plan must be reviewed and approved by then Austin Water Utility. The plan must be in accordance with the City's utility design criteria and specifications.

### Stormwater Detention

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

### Compatibility Standards

The site is subject to compatibility standards along the eastern property line that abuts the SF-2 zoned property with an existing single-family residence. Any new site development will be subject to the following compatibility regulations:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- For a structure more than 100 feet but not more than 300 feet from the property line, a structure may attain a height of 40 feet plus one foot for each 10 feet if distance in excess of 100 feet from the property zoned SF-5 or more restrictive.
- For a structure more than 300 feet but not more than 540 feet from the property line, a structure may attain a height of 60 feet plus one foot for each four feet if distance in excess of 300 feet from the property zoned SF-5 or more restrictive.
- No parking or driveways are allowed within 25 feet of the property line

- A landscape area at least 15 feet in width is required along the property line if tract is zoned MF-3, MF-4, MF-5, MH, NO, or LO.
- A landscape area at least 25 feet in width is required along the property line if the tract is zoned LR, GO, GR, L, CS, CS-1, or CH.
- A fence, berm or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

Development of a cocktail lounge, or a General Restaurant with late-hours alcohol sales permit, will require the approval of a Conditional Use Permit.

# Case History: 900 E Braker Lane, Unit 170

Legally Known As: LOT 2 RESUB OF LOT 1 BRAKER LANE CENTER SEC 1

InspeTrack Case Number: IT # 04-016500

Date Opened: 01/14/2004 Case Status: OPEN TCAD #: 02472308120000 Plat #:

1/14/2004-Present #729 Paul Tomasovic

Walnut Ridge Shopping Center, c/o Thomas C. Calhoon  
315 Lavaca Street, Austin, TX 78701-3936

OCCUPANT: Greene, Judson  
1003 Horseman Cove, Round Rock, TX 78664

COA Department

Date: 1/14/2004

Complainant: COA Department

Description: Business not operating according to their CUP.

Manager Contacted: No

Premises

Status: 4/26/2004 - Unoccupied

Findings 4/26/2004 - Zoning violation(s) found

4/27/2004: Recommended Cease all business activity until all required site plan, permits and Certificate of Occupancy are obtained for the within 30 days.

4/27/2004: Recommended A bar/club requires a Conditional Use Permit and CS-1 (Commercial Liquor Sales District) Zoning. And therefore it is not a permitted use for the within 30 days.

4/27/2004: Recommended Contact the City of Austin Development Assistance Center at (512)974-8370 for help in bringing this violation into compliance on the within 30 days.

**Red Tag/EBS:**

1/15/2004 #729 (Paul Tomasovic)  
4

Conducted An initial inspection of the Property. Inspector's Comments: "Met with workers at the site, told them to have the owner to call me. They have removed the wall between their approved site and have expanded into a vacant site of the building. The vacant area is zoned GR which would not permit a bar or nightclub. It appears that more of all work at this time is not structural, except the removal of the wall." Follow-Up on 1/29/2004

- 1/15/2004 #729 (Paul Tomasovic) Conducted A Follow-Up inspection of the Property. Inspector's Comments: "6:00pm inspection, could not contact the owner at the time of my inspection, left card for owner to call me." Follow-Up on 4
- 1/16/2004 #729 (Paul Tomasovic) Information Update and research results. Inspector's Comments: "Spoke with the owner @ 276-9875, he stated that they are not open for business and are applying for all permits and zoning." Follow-Up on 4 1/29/2004
- 2/18/2004 #729 (Paul Tomasovic) Conducted A Follow-Up inspection of the Property. Inspector's Comments: "Spoke with owner, told owner to stop using the dance floor area of the building because they have no CO or permit for the improvements. Owner stated that he would stop using the additional area." Follow-Up on 4 3/15/2004
- 3/5/2004 #729 (Paul Tomasovic) Conducted A Follow-Up inspection of the Property. Inspector's Comments: "9:00pm inspection, business was closed." Follow-Up on 3/6/2004
- 3/5/2004 #729 (Paul Tomasovic) Information Update and research results. Inspector's Comments: "Called fire Marshall Don Smith @ 974-0160, he will send a crew (Inspector James Hoad @ 748-4742) out Saturday night to inspect for violations" Follow-Up on 3/20/2004
- 3/6/2004 #729 (Paul Tomasovic) Conducted A Follow-Up inspection of the Property. Inspector's Comments: "10:30pm inspection, business was closed." Follow-Up on 3/28/2004
- 4/26/2004 #729 (Paul Tomasovic) Information Update and research results. Inspector's Comments: "I have been receiving information from members of the neighborhood, and from city staff Sue Walsh that the business is opening at night. I also received a flyer that was advertising a band called Crucial Prophet who was going to be holding a Hip-Hop night at the Sahara Club on April 15, 2004. I pulled up the bands web page and it also show that they will be at the Sahara Club again on 04-29-2004. Performed a 5:00pm inspection, left card at front door, no one at the site at the time of my inspection." Follow-Up on 4 5/10/2004
- 4/27/2004 #729 (Paul Tomasovic) Sent Notice of Violation to the Owner. Inspector's Comments: "To discontinue the use until site plan exemption, permits, and certificate-of-occupancy are obtained with-in 30 days." Follow-Up on 4
- 4/27/2004 #729 (Paul Tomasovic) Sent Notice of Violation to the Owner. Inspector's Comments: "To discontinue use until all site plan exemptions, permits, and CO are obtained." Follow-Up on 4 5/27/2004
- 4/28/2004 #729 (Paul Tomasovic) Information Update and research results. Inspector's Comments: "Left voice message for LT. James Hoad @ 974-0160 ex#1 with AFD to call me to set up for a fire inspection at this site on 04-29-2004." Follow-Up on 4 5/10/2004

**Valid Conditions In Violation of the 2004 Austin City Code (Land Development Code):**

**Premises**

04/28/2004	CERTIFICATE OF OCCUPANCY	Code Ref: 25-1-381 Inspector received information showing that the bar is opening for business, and has enlarge the bar area with out permits, certificate-of-occupancy, or site plan
------------	--------------------------	---

Legal Notice (Zoning) sent on 4/27/2004 to (the owner) Thomas C. Calhoun, certified #7001 0360 0000 3566 3031. Status: Return Receipt Not Yet Received



# Crucial Prophet

International Reggae Band

Harris

Hip Hop Night

## Thursday, April 15, 2004

7 p.m. - 2 a.m.

at Sahara Club

900 E. Braker Lane #170, (512) 750-2499

\$6.00 cover, First Drink Free (with this Ad)

First 100 Ladies get in Free

Fish and Bake, plus Freestyle Contest

Featuring Guest Artists: D-Way + Goliath

23 Mic Breakaz, Hogpin Clique, Dynamite,

MC Fatal, and OTB

a Forward Productions event

[www.geocities.com/CrucialProphet](http://www.geocities.com/CrucialProphet)

## **MEMORANDUM**

**TO:** Betty Baker, Chair and Members of the Zoning and Platting Commission

**FROM:** Dora Anguiano, Zoning and Platting Commission Coordinator  
Neighborhood Planning and Zoning Department

**DATE:** August 5, 2004

**SUBJECT:** Zoning and Platting Commission Summary

Attached is a Zoning and Platting Commission summary, which will be forwarded to the City Council.

**CASE # C14-04-0058**

8. C14-04-0058 - WALNUT RIDGE SHOPPING CENTER (Thomas C. Calhoun), By: Turnkey Properties (Victorious B. Giraud), 900 East Braker Lane. (Walnut Creek). FROM GR TO CS-1. NOT RECOMMENDED. City Staff: Sherri Gager, 974-3057. CONTINUED FROM 8-18 (ZAP); PUBLIC HEARING WAS RE-OPENED; 6-7 (ZAP).

### SUMMARY

Sherri Gager, staff - "Would you like to make a full presentation again?"

Commissioner Baker - "We have one new commissioner, as a courtesy, I would say yes".

Ms. Gager - "This is a reconsideration for this case, the request is from GR zoning to CS-1 zoning and staff recommends denial of the requested CS-1 zoning. The basis for the staff's recommendation is, the proposed zoning should be consistent with the purpose statement of the district sought. The property does not meet the purpose statement of district sought; commercial liquor sales district is the designation for a commercial or industrial use of a service nature that it's operating characteristic or traffic service requirements that are incompatible with residential environments. Liquor sales is one of the permitted uses in the CS-1 district. This site is adjacent to SF-2 and SF-3 zoning; there is an existing apartment complex directly to the north of this property. Commercial liquor sales zoning is not compatible with this residential environment. In addition, this site does not meet the traffic service requirements for CS-1 zoning, parking would be inadequate and a parking variance would be needed. According to our parking calculations the applicant would be 44 spaces short on this site with the addition on the CS-1 use to this addition space on this property. The area in question has an adequate amount of CS-1 zoning; currently there are 3 existing pad sites of CS-1 zoning, located within the shopping center area; there are two within this direct shopping center and one directly to the west of this and the shopping center adjacent to it. There's already a lot of CS-1 zoning in the area; recommending more CS-1 zoning would contribute to the over zoning of this area".

Applicant - "Thank you for reconsidering this matter; we have talked extensively on about the place on 900 Braker Lane, what we have there is a club called Sahara Club. It's a cultural club that sponsors different programs; it's not your regular night club or drinking place. Yes, drinking does go on there, but we do have a variety of programs that carry on. We have one liquor store that closes at 9:00 in that shopping center. All we asking for is additional space for dancing and a stage for cultural performances. We have added Salsa dancing and lessons on Saturdays. Many people in the community have been asking for this. We have a main group that meet weekly, it's a poetry group and I have two representatives here to tell you what Sahara is doing and what it's trying to achieve. The entire shopping center is closed at night, except for our place and on Saturday night there's a bingo parlor, there is no other night activity. We have permission to use parking spaces of the other businesses. I hope you grant us the approval for this change in zoning so that we can provide a valuable service for the community".

Commissioner Rabago – “What services do you offer for young people?”

Applicant – “We have a Sunday afternoon program that starts at 3:00 in the afternoon; we have music, food and some parents bring their children over; they stay until 6 or 7 p.m and then go home. In the near future, if we get the necessary approval, we’ll be doing Salsa dancing lessons for teenagers”.

Commissioner Rabago – “It seems like you are already able to do that?”

Applicant – “The space that we have is 1300 square feet, which is a very limited area; so we are requesting this change to build into the other space and make this a larger place”.

### FAVOR

Herman Mason – Spoke in favor.

Ron Horn – Spoke in favor.

Commissioner Baker – “What are the ages of these youths?”

Mr. Horn – “Right now we are serving youths between the age of 13 and 19”.

Commissioner Baker – “You would actually have them in a bar where alcoholic beverages are being sold?”

Mr. Horn – “No, I did not say that; what I’m saying is ...”

Commissioner Baker – “That’s what this zoning change is about”.

Mr. Horn – “What I’m saying is that this business needs to have the contributions of its patrons in order to survive to help us. Our kids are not going to be in the club, but the survival of the club contributes to the well being of our organization”.

Commissioner Baker – “Does the club donate to your organization or something?”

Mr. Horn – “Well, what the club does, it provides a venue for writers to develop their writing skills; those writers are mentors to the kids in the schools”.

Commissioner Rabago – “How long have you said that you’ve been doing this?”

Mr. Horn – “We’ve been working on this since October of last year; this would be the first year that we try to install the program into the school system”.

Commissioner Donisi – “I want to thank you for your dedication to persuing this and your vision for helping the children of today and tomorrow”.

Mr. Horn - "Well, it takes guys like him to make it happen".

Commissioner Rabago - "I also want to express my gratitude for passing out the information that I think I would enjoy listening to".

Mr. Horn - "These are videos of some of the kids in Austin; as well as around the country and around the world at the National Youth Poetry Slam in L.A, where Austin's team was 5<sup>th</sup> in the nation this year".

**COMMISSION ACTION:  
MOTION:**

**BAKER, WHALEY  
APPROVED STAFF'S  
RECOMMENDATION TO DENY CS-1  
ZONING.**

**AYES:**

**BAKER, DONISI, HAMMOND,  
WHALEY, RABAGO.**

**NAY:**

**GOHIL, MARTINEZ, JACKSON**

**ABSENT:**

**PINNELLI**

**MOTION CARRIED WITH VOTE: 5-3.**

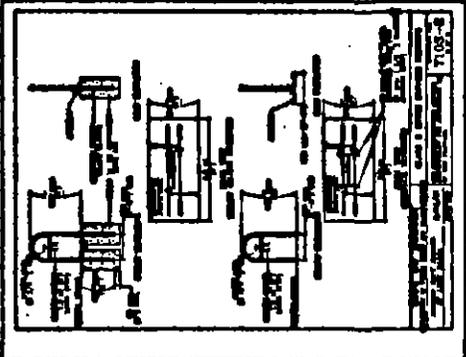
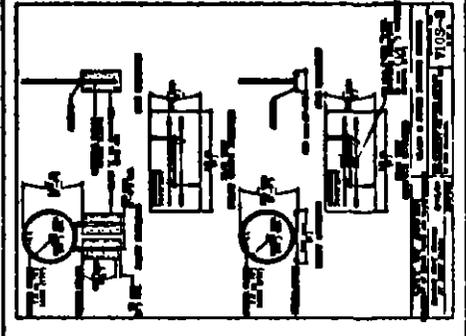
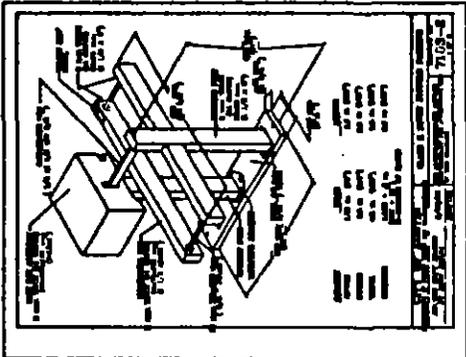


**TABLETATION**

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 CHECKED BY: J. L. BROWN

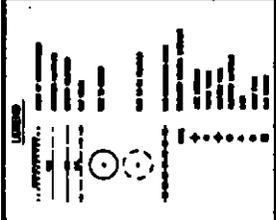
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**LEGEND**

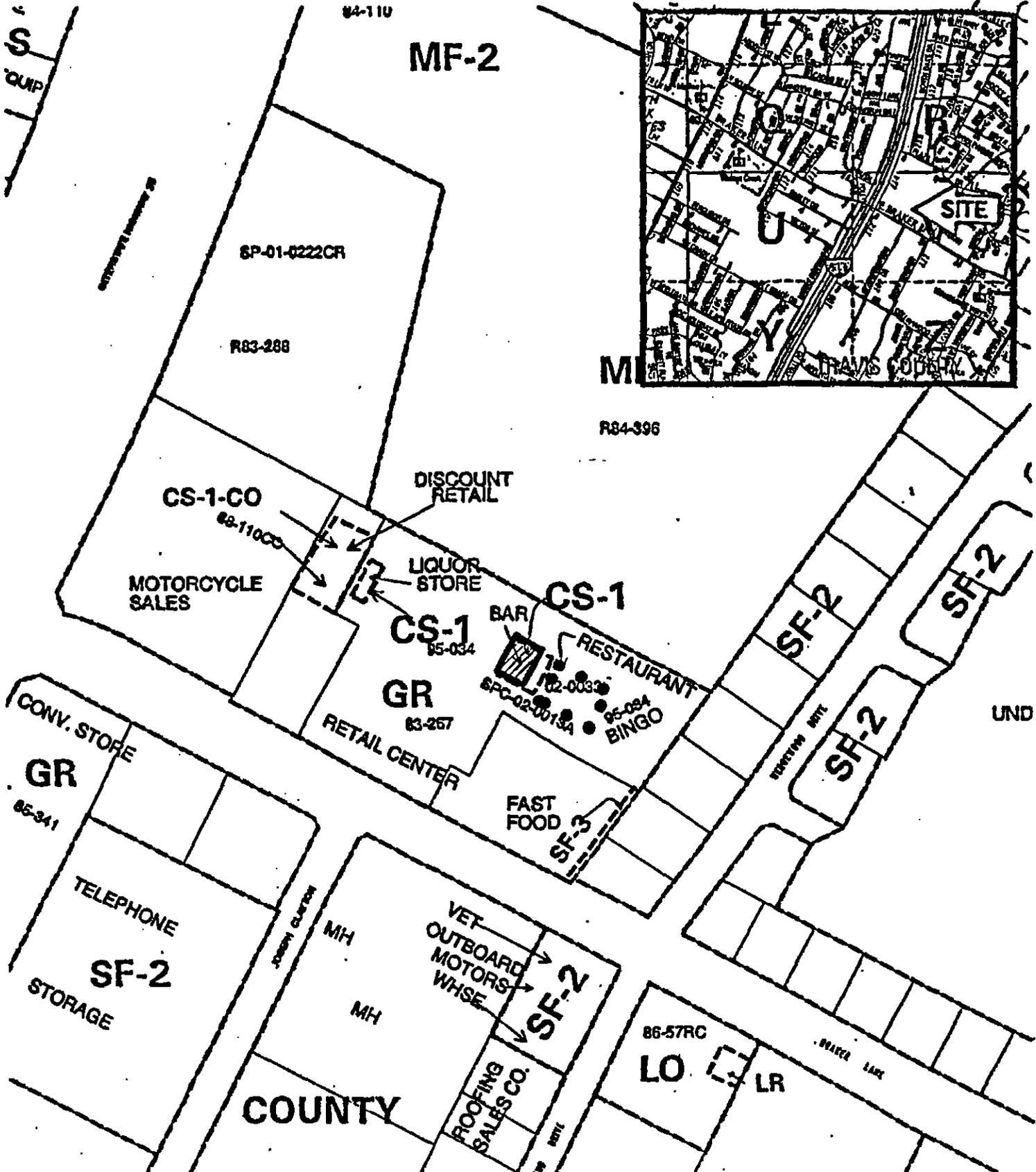
- 1. BUILDING FOOTPRINTS
- 2. PARKING AREAS
- 3. DRIVEWAYS
- 4. SITE BOUNDARIES
- 5. UTILITY LINES
- 6. LANDSCAPING
- 7. FENCES
- 8. SIGNAGE
- 9. LIGHT FIXTURES
- 10. TREE SYMBOLS
- 11. SHEDS
- 12. DRIVEWAYS
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**900 EAST BRAKER LN.**  
 900 EAST BRAKER LANE  
 AUSTIN, TEXAS 78753

Sheet 3 of 3  
 SPC 02 - 0013A

**Thruway Design**  
 LAND PLANNERS

11111 RIVERSIDE DRIVE  
 AUSTIN, TEXAS 78741  
 TEL: 512/476-1111



	SUBJECT TRACT		<b>ZONING EXHIBIT B</b> CASE #: C14-02-0130 ADDRESS: 900 E BRAKER LANE SUBJECT AREA (acres): 0.009	CITY GRID REFERENCE NUMBER M31	
	PENDING CASE				DATE: 02-08
	ZONING BOUNDARY				INTLS: SM
	CASE MGR: S. GAGER				

MF-2

Attachment

SP-01-0222CR

R83-288

MF-2 APARTMENTS

R84-396

CS-1-CO

88-110CO

DISCOUNT RETAIL

MOTORCYCLE SALES

LIQUOR STORE

CS-1

BAR

CS-1

85-034

RESTAURANT

GR

83-267

SPC-02-0013A

RETAIL CENTER

FAST FOOD

SF-3

UNDEVELOPE

ORE

EPHONE

SF-2

MH

VET OUTBOARD MOTORS WHSE.

MH

SF-2

86-57RC

LO

LR

BRAKER LANE

SF

COUNTY

ROOFING SALES CO.

PORTABLE BLDGS

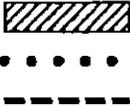
BLVD BEND DRIVE

COUNTY

84-409



SUBJECT TRACT  
PENDING CASE  
ZONING BOUNDARY  
CASE MGR: A. BEAUDET



CASE #: C14-02-0033  
ADDRESS: 900 E BRAKER LANE  
SUBJECT AREA (acres): 0.407

ZONING

DATE: 02-04

INTLS: SM

CITY GRID REFERENCE NUMBER  
M31

1" = 200'

**U/G/O**  
**HIGHWAY 35**

**GR**

**MF-2**

APARTMENTS

**CS-1-CO**  
SUPERMARKET

**GR**

RETAIL CENTER

**SF-3**  
10' BUFFER

**SF-2**

CONV. STORE  
DRY CLEAN

**GR**

TELEPHONE  
STORAGE

CITY COUNTY

CLINIC  
VET

WYSE

ROOFING  
SALES CO.

PORTABLE  
BLDG.

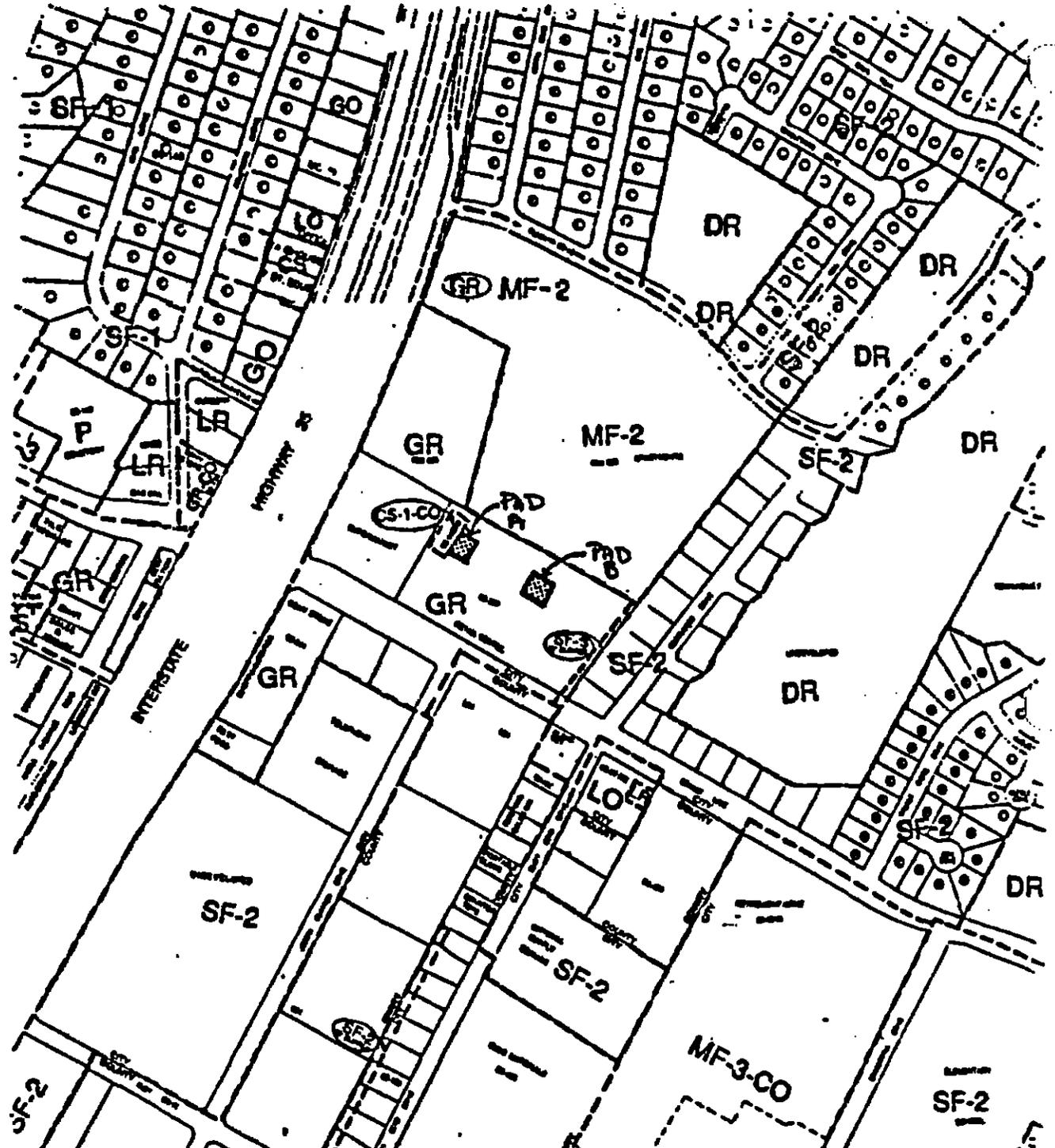
**LOE**  
CITY COUNTY

BRAKER LANE  
CITY COUNTY

JOSEPH CLAYTON DRIVE  
CITY COUNTY

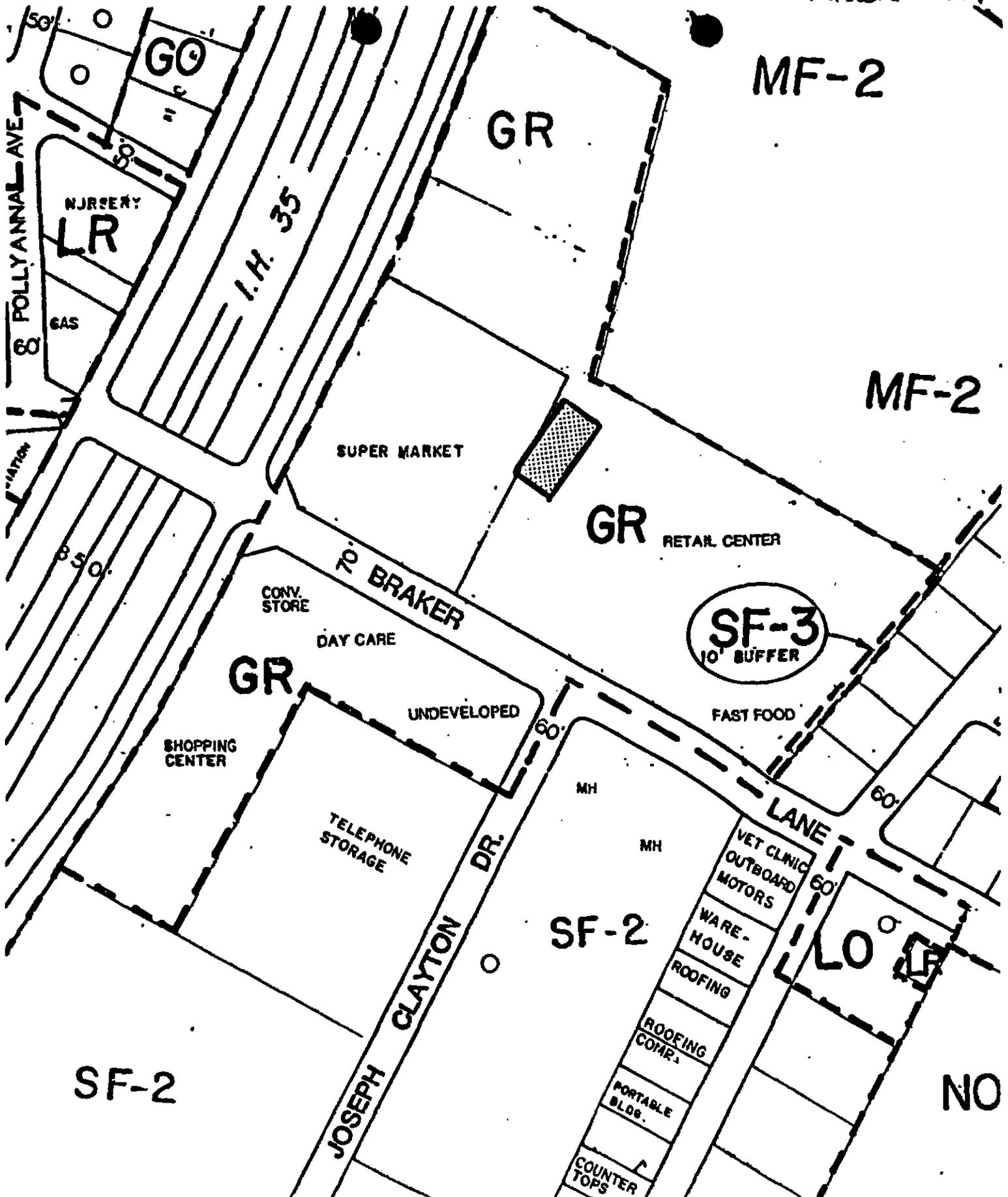
	<b>SUBJECT TRACT</b>  <b>PENDING CASE</b> ..... <b>ZONING BOUNDARY</b> - - - - - <b>CASE MGR:</b> <b>CYCLE:</b> 4/85 <b>INTLS:</b> M. STECK	<b>CASE #:</b> <b>C14-95-0054</b> <b>SUBJECT AREA:</b> 0.130 ACRES <b>ADDRESS:</b> 800 E. BRAKER LANE	<b>CITY GRID REFERENCE NUMBER</b> <b>M - 31</b>

**SF-2**



SUBJECT TRACT		CASE #: C14-95-0034	CITY GRID REFERENCE NUMBER
PENDING CASE		SUBJECT AREA Acres: 0.168	M31
ZONING BOUNDARY		ADDRESS: 900 E. BRAKER LANE	
CASE MGR:			
1"=400'	CYCLE: 95-03	INTLS: TRC	

"Exhibit C"



	NORTH	PENDING CASE .....	SUBJECT TRACT .....	GRID
		ZONING LINE - - - - -	SUBJECT ACREAGE 9.205	M31
		CYCLE <u>9/8</u> INTLS <u>Yelmos</u>	CASE NO: C14-88-0110	

**Gager, Sherri**

---

**From:** Lester and Lois Johnson [ljohnson@ccsl.com]  
**Sent:** Thursday, June 03, 2004 3:02 PM  
**To:** Gager, Sherri  
**Cc:** z Lee  
**Subject:** Hearing on Sahara Club

Thank you for your informing us of the hearing to re-consider by the Zoning & Platting Commission the action taken on June 1 on the Sahara Club located in the 900 block of East Braker Lane.

In the event this action is to be reconsidered, as President of the Northeast Walnut Creek Neighborhood Association, I would request a two week postponement (to June 29th) of the hearing as I will be out of the state until June 19th.

Also, if this does go to the Council, I would like to have it considered after June 19th.

If you need to talk to me you may call me on my cell phone, number 913-2778, or e-mail me at [ljohnson@ccsl.com](mailto:ljohnson@ccsl.com). I will be looking at my e-mail after June 9th.

Thank you for you attention to this matter

Lester Johnson  
President  
NEWCNA



**Kin Properties, Inc.**

185 N.W. Spanish River Blvd., Suite 100 • Boca Raton, FL 33431-4230  
Tel (561) 620-9200 • Fax (561) 955-9921  
www.kinproperties.com

June 16, 2004

City of Austin Neighborhood Planning  
& Zoning Department  
505 Barton Springs Road  
P.O. Box 1088  
Austin, Texas 78767-8835

RE : Property #: 7043 – 804 Braker Lane, Austin, Texas  
File Number: C14-04-0058 (900 East Braker Lane)

Ladies and Gentlemen:

This office serves as managing agent for Susan Sandelman as Trustee of the Alisan Trust, the owner of the Property commonly known as 804 Braker Lane. In that capacity, we received Notice of Filing of Application for Rezoning of the property located at 900 East Braker Lane from GR-Community Commercial district to CS-1-Commercial Liquor Sales district. We object very strenuously to such an operation. The property is located proximate to a number of apartments and, as the definition of the Code appropriate states, such zoning is generally incompatible with a residential environment. Municipalities must take great care when granting the privilege to sell liquor.

Both our location and the residence of the owner will not attend the planned hearings with respect to the potential modification and zoning, but we did wish to make our objections known. Please share this letter with appropriate authorities.

Please furnish us with any and all documentation with respect to the matter.

Very truly yours,

Allen P. Lev  
General Counsel

APL/dms

cc: Jeffrey Sandelman

1003 Horseman Cove  
Round Rock, TX 78664  
August 10, 2004

Ms. Sherri Gager  
Planner III, Neighborhood Planning & Zoning Dept.  
505 Barton Springs Road  
Austin, TX 78704

Dear Ms. Gager:

Because of my desire to meet the Walnut Ridge Neighborhood Association on Septemebr 18<sup>th</sup>, 2004, I am requesting a postponement of my Zoning Case C14-04-0058 which is now scheduled for the City Council meeting of August 26<sup>th</sup>, 2004.

Please let me know the next available date for my case to be scheduled.

Thanks in advance for your kind understanding.

Sincerely,



Judson Greene, Jr.  
OWNER, CLUB SAHARA

# PETITION FOR CLUB SAHARA

Residents  
and  
Neighbors  
of Walnut  
Ridge  
Community

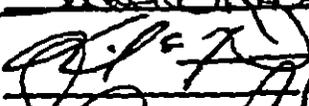
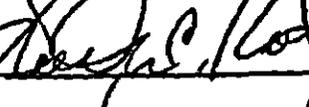
This letter is in support of the proposed zone change for expansion of the Sahara Club @ 800 E. Braker Ln. This club holds and sponsors a variety of weekly cultural and entertainment activities such as Neo-Soul poetry readings, salsa and African dancing, and opportunities for private parties and receptions. We believe that if Sahara Club is given the opportunity to expand, it would certainly become an asset to Walnut Ridge Community by providing a safe place for entertainment.

Please indicate your support by signing below.

NAME	Address	Signature
Mary Elizabeth Young	910 River Oaks Dr.	M. Elving
Michael Young	910 River Oaks Dr.	M. Young
Randy Bates	11917 River Oaks	R. Bates
Beverly Bates	11917 River Oaks	Beverly Bates
Danny @ Bobbie P. K.	11917 River Oaks Tr.	D. Young
Nancy Martin Nancy Martin	911 River Oaks Dr.	Nancy Martin
Bobbie Fulton	11917 River Oaks Tr.	Bobbie Fulton
Spoke Falkner	910 River Oaks	Spoke Falkner

Name  
Paul R. Ruff  
Lucas H. H. H.  
Dwaine Paine  
Christina  
Miriam B. Haggerty  
Miriam B. Haggerty  
Margaret K. Gibson  
Maryann P.  
Richard D. D.  
VL MILG  
Don Buffon  
Adalia Caron  
Michelle Zamora  
Mary Anderson  
Derrick Lem  
TANASHI ROGERS  
MICHAEL RUF  
Sandra C. Rodrig

Address # 2210 4  
11441 TH 35  
9  
11441 IH 35 # 22202  
11441 T-H 35 # 21207  
11441 IH 35 # 26308  
11441 N IH 35 # 26102  
11441 N IH 35 # 13301  
11441 N-TH 35 17103  
11441 N-TH 35 13303  
11441 N-TH 35 H 202  
11441 N-S-H 35 10101  
# 194  
850 Cameron Rd  
20204  
11441 N-E-H 35 #  
11441 N IH 35 20307  
11441 IH 35 N 20302  
11441 IH 35 N 20105

Signature  
  
Dwaine Paine  
Chris Sarsing  
Miriam B. Haggerty  
Maryann P.  
Richard D. D.  
  
Adalia Caron  
Michelle Zamora  
Mary Anderson  
Derrick Lem  
TANASHI ROGERS  
  


Name	Address	Signature
<del>David Torres</del>	Apt 1800	<del>[Signature]</del>
David Torres	11441 IH-35 #18205	[Signature]
Melissa Zwer	" 18205"	Melissa Zwer
Marcelle Wike	11441 IH-35 18201	[Signature]
Paul Crowell	11441 IH-35 #18202	[Signature]
[Signature]	#19100 Apt	[Signature]
Angel Richard	11441 IH-35 18203	Angel Richard
Alfred Carter	4199 IH 35 17210	Alfred Carter
Troy [Signature]	7701 Leathman Ln	[Signature]
FELICIA MOKOBITZ	1803 E Anderson Ln	[Signature]
Jose Hernandez	11441 IH35 9206	Jose Hernandez
[Signature]	11441 IH 35 #9107	[Signature]
[Signature]	4305 ZUNZ	[Signature]
Thomas [Signature]	1144 IH 35 19202	[Signature]
Jamal Washington	Apt 10305	Jamal Washington
Hezekiah Paul	Apt 10306	[Signature]

# PETITION FOR CLUB SAHARA

**Residents  
and  
Neighbors  
of Walnut  
Ridge  
Community**

This letter is in support of the proposed zone change for expansion of the Sahara Club @ 900 E. Braker Ln. This club holds and sponsors a variety of weekly cultural and entertainment activities such as Neo-Soul poetry readings, salsa and African dancing, and opportunities for private parties and receptions. We believe that if Sahara Club is given the opportunity to expand, it would certainly become an asset to Walnut Ridge Community by providing a safe place for entertainment.

Please indicate your support by signing below:

NAME	Address (Cricket Hollow)	Signature
Vanessa Mejicano	11441 IH 35 #23105	Vanessa Mejicano
Jessica Vasquez	11441 IH 35 #23105	<i>[Signature]</i>
Kelvin J Edwards	11441 ISS Apt 23105 #23105	Kelvin J. Edwards
Iruina Jones	11441 N IH 35	Iruina Jones
D Brett Kilmer	11441 N IH 35 #23105	Brett Kilmer
Robert P... <i>[Signature]</i>	11441 N IH 35 #23105	<i>[Signature]</i>
Sorge	11441 N IH 35	Sorge
M... <i>[Signature]</i>	11441 N IH 35 25201	Sorge
	" "	M... <i>[Signature]</i>

# PETITION FOR CLUB SAHARA

Local  
Supporters

This letter is in support of the proposed zone change for expansion of the Sahara Club @ 900 E. Braker Ln. This club holds and sponsors a variety of weekly cultural and entertainment activities such as Neo-Soul poetry readings, salsa and African dancing, and opportunities for private parties/ receptions. We believe that if Sahara Club is given the opportunity to expand, it would certainly become an asset to Walnut Ridge Community by providing a safe place for entertainment.

Please indicate your support by signing below.

NAME	ADDRESS	Signature
Gerardo Flores	1307 1117 E. Cordova Rt. 17	[Signature]
Kat Rice	702 Stillmeadow Rt 781081	[Signature]
Thelma Dominguez	3044	[Signature]
Milagros Escobedo	2320 Lasswell Dr. Rt. 17	[Signature]
Maryann Wilkins	1902 Easton Rt. 17	[Signature]
Albert [unclear]	1615 W. Hwy 77	[Signature]
Fanny Diaz	1015 East Yager Lane #79 Austin	[Signature]
[unclear]	601 Colburn Lane Austin	[Signature]
Jean Stokes	3100 Greenwood 78157	[Signature]
Megan Galt	2420 Ashdale #202 78757	[Signature]
[unclear]	16201 Roush Oak #112 507X 78232	[Signature]
[unclear]	3104 Bogan Dr	[Signature]

Name	Address	Signature
Elma Lopez		Elma Lopez
Bernadette		Bernadette
Alfred Garcia		Alfred Garcia
Ariana Gonzalez		Ariana Gonzalez
Andrew Guzman		Andrew Guzman
Shands Pemberton		Shands Pemberton
ALBERT PELAEZ		ALBERT PELAEZ
Edwin Crespo		Edwin Crespo
GINA LERO		GINA LERO
Rena Smith		Rena Smith
Debbie Martinez		Debbie Martinez
Arnellus Ozy		Arnellus Ozy
Jeanine Smith		Jeanine Smith
Rafael Postinari		Rafael Postinari
Milton Pina		Milton Pina
Caroline		Caroline
Laymo Luro		Laymo Luro
JOAN SIMONAZ		JOAN SIMONAZ
Judson Greene III		Judson Greene III

Name	Address	Signature
JAMES McNEELY		<i>James McNeely</i>
STEPHEN HARDEN		<i>Stephen Harden</i>
<del>STEPHEN HARDEN</del>		<del>Stephen Harden</del>
SUE RUFFSON		<i>Sue Ruffson</i>
Maggie Ramirez		<i>Maggie Ramirez</i>
Raul Ramirez		<i>Raul Ramirez</i>
PATRICIA HARSH		<i>Patricia Harsh</i>
Kathy Diaz		<i>Kathy Diaz</i>
MARIA OLIVERA		<i>Maria Olivera</i>
Andres Delgado		<i>Andres Delgado</i>
Renee March		<i>Renee March</i>
Constance		<i>Constance</i>
Sharon Gonzalez		<i>Sharon Gonzalez</i>
Yvonne Gonzalez		<i>Yvonne Gonzalez</i>
ALEXIS FLORES		<i>Alexis Flores</i>
Jean Carlos		<i>Jean Carlos</i>
Anna Rossou		<i>Anna Rossou</i>
Javier Santos		<i>Javier Santos</i>

Name	Address	Signature
Probal Peraza		Muy
Alfredo Gonzalez		Alfredo Gonzalez
Alma de A. Lopez		Alma de A. Lopez
Azner Tassia		Azner Tassia
Ray A. Sanchez		Ray A. Sanchez
Stephanie Wright		Stephanie Wright
CARMEN SOLAZANO		Carmen Solazano
Duqueline Laurena		Duqueline Laurena
Kamel Veloz		Kamel Veloz
Ronald Prochazka		Ronald Prochazka
Osme Castillo		Osme Castillo
Junior Martinez		Junior Martinez
Ayo Matarde		Ayo Matarde
NOEMI LOPEZ		Noemi Lopez
Delia Jaramillo		Delia Jaramillo
Carlos Pacho		Carlos Pacho
<del>Delia Jaramillo</del>		<del>Delia Jaramillo</del>
Delia Jaramillo		Delia Jaramillo

# PETITION FOR CLUB SAHARA

Local  
Supporters

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Please indicate your support by signing below.

NAME	ADDRESS	Signature
Dayo Eshe	3517 North Hills Austin TX 78731	Dayo Eshe
Annanda Smith	405 E 5th Austin TX 78701	Annanda Smith
Naomi Langsne	1024 S. 24th St Austin TX 78704	Naomi Langsne
Dameyan Landrum	700 Lewis Home Blvd Austin TX 78704	Dameyan Landrum
Henry ...	711 ...	Henry ...
Jennine Krueger	4910 FM 678 Dale TX 78016	Jennine Krueger
Bree Simmons	416 FM 672 Dale TX 78016	Bree Simmons
Dora Robinson	3020 E. 12th St Austin TX 78702	Dora Robinson
Annel Wilson	501 E. 21st St. Apt. 1115 Austin, TX 78703	Annel Wilson
Marsha Platt	501 East 21st St Austin TX 78703	Marsha Platt
Brian Francis	141737 Moss Austin TX	Brian Francis
Michael Whalen	1200 Barton Hills Dr #242 Austin TX 78704	Michael Whalen


Name	Address	Signature
T. Lynn West	12007 Low Hills Trl Austin, TX 78704	<i>T. Lynn West</i>
Rita Arnold	1714 Elmwood Dr Allamore, TX 78001	<i>Rita Arnold</i>
Eddie Arnold	"	<i>Eddie Arnold</i>
Brandy Ayers	908 Chicon St. Austin, TX 78702	<i>Brandy Ayers</i>
Clarissa Boldin	7307 Barcelona	<i>Clarissa Boldin</i>
Danell Smith	1807 Luraywood Ln Round Rock, TX 78681	<i>Danell Smith</i>
Steven Bishop	1707 Aqueduct Springs	<i>Steven Bishop</i>
Box Terina Lynch	↓	
Line Mason	PO Box 80212 Muskegon, MI 49705	<i>Line Mason</i>

# PETITION FOR CLUB SAHARA

Local  
Supporters

This letter is in support of the proposed zone change for expansion of the Sahara Club @ 900 E. Braker Ln. This club holds and sponsors a variety of weekly cultural and entertainment activities such as Neo-Soul poetry readings, salsa and African dancing, and opportunities for private parties/receptions. We believe that if Sahara Club is given the opportunity to expand, it would certainly become an asset to Walnut Ridge Community by providing a safe place for entertainment.

Please indicate your support by signing below:

NAME	ADDRESS	Signature
Yael Zmiller	Austin 105 E Canyon 78744	[Signature]
ARTURO L. GARZA	4709 GANYMEDE	[Signature]
KATHERINE ODOMIXON	4704 Ganymede	[Signature]
JOSE ROMAN	6400 RUXTON LN, AUST	[Signature]
Rebecca	507 Sabine	Austin TX
Chel Corales	P.O. Box 8467 Austin TX 78713	[Signature]
VICTOR M	5307 DALTON ST	[Signature]
Claude Gaudin	9506 Echulmee	[Signature]
Olga M. Flores		Olga M Flores
MARIA C FLORES		Maria C Flores
ANDREA DELACRUZ	13221 CAMP ROBERTS	[Signature]

Name	Address	Signature
Berry		<i>[Signature]</i>
Alexis LAFITTE		<i>[Signature]</i>
Michele Owens Pearce	2424 Thornton 78704	<i>[Signature]</i>
MARCEAU ANTONES	12100 Metric 78758	<i>[Signature]</i>
Leo Ruenc	1441 Tuffit Ln Austin TX 78753	<i>[Signature]</i>
Liliana Gonzalez	600 Luther Dr. Apt. 405 Georgetown TX 78626	<i>[Signature]</i>
Orlando Gonzalez	Same as Above	<i>[Signature]</i>
Samuel Lopez	4016 Baker St	<i>[Signature]</i>
Vernado Rivera	501 Mendota St	<i>[Signature]</i>
Mira Juarez	1401 St. Edwards, Apt 205	<i>[Signature]</i>
Eloy	2100 Haskell 78702	<i>[Signature]</i>
Ella Harting	1003 Univ. Ave.	<i>[Signature]</i>
Marina del Sol	Same as above	<i>[Signature]</i>
Jesus COBYE	4707-A Jolin Drive Killeen, TX 76549	<i>[Signature]</i>
Miriam Villanueva	4707-A Jolin Drive	<i>[Signature]</i>
Benjamin Jacob	2100 Haskell	<i>[Signature]</i>
LESTIE RODRIGUEZ	1301 Crossing Place 78746	<i>[Signature]</i>

Name	Address	Signature
Jessett Blackman	2015 cedar bend Dr	Jessett Blackman
William Sanchez	2015 cedar bend Dr	William Sanchez
Vincent Sycamore		Vincent Sycamore
Rachel Arciniega	1241 metric Blvd	Rachel Arciniega
Ahmed Mohameddin	401 Stood Creek	Ahmed Mohameddin
Stephanie Escalona	3100 Wells Branch	Stephanie Escalona
William Escalona	3101 Wells Branch	William Escalona
Morissette Jyada	807 Runners Ridge	Morissette Jyada
AKIF KATHH	3201 DUVAL RD	AKIF KATHH
DELANO KOSS	SAN ANTONIO, TX	DELANO KOSS
JOHN ANDRADE	1179 North Ave. E. Elamtr.	John Andrade
Evanso GRANOSA	1919 Wilson Ln # 200	Evanso GRANOSA
MIGUEL FIGUEROA	1608 MONROE Killeen TX 76749	MIGUEL FIGUEROA
Elliott Figueroa	1401 ak. Corral Austin, TX 78748	Elliott Figueroa
Kathleen Atwood	4302 Ave. A Austin 78751	Kathleen Atwood
Susana M.	_____	Susana M.
Angelica Solis	_____	Angelica Solis
Julio Cesar G.	_____	Julio Cesar G.



Attachment J

# facsimile transmittal

<b>To:</b>	<b>Mr. Greg Guernsey/Mrs. Sherri Gager</b>	<b>Fax-974-1890</b>	<b>Phone- 974-2266</b>
<b>From:</b>	<b>TCM Design and Building Group</b>	<b>Date:</b>	<b>1/24/2005</b>
<b>Re:</b>	<b>Club Sahara</b>	<b>Pages:</b>	<b>2</b>
<b>CC:</b>	<b>1</b>		
<b>Urgent</b>	<b>x For Review</b>	<b>Please Comment</b>	<b>Please Reply</b> <b>Please Recycle</b>

**Mr. Guernsey & Mrs Gager:**

We have tried to speak with Mr. Lester Young, President of the Northeast Walnut Creek Neighborhood Association has not changed his position as far as saying that he can not enforce an Restrictive Covenant. He refuses to sit at the table to discuss it any further.

He failed to appreciate the following two points.

1. The Covenant specifically states that Mr. Greene is the only name of which the Conditional Use Permit could be extended under.
2. It is requested that a CUP be renewed every two years.

God Bless you and have a great day.

Eddie Hurst  
TCM Design and Building Group  
Office 457-1751  
Fax 457-1750

## RESTRICTIVE COVENANTS

STATE OF TEXAS

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF TRAVIS

WHEREAS, THOMAS C CALHOON, (hereinafter referred to as "Declarant") is the owner of that certain tract of real property (hereinafter referred to as the "Property"), consisting of approximately 3.573 acres, Travis County, Texas, as further described on Exhibit "A" attached hereto and made a part hereof for all purposes; and

WHEREAS, Declarant desires to temporarily establish a night club on the Property, in order to protect the neighborhood from future use of the said site to be utilized as a night club in the future, Declarant desires to impose certain covenants and restrictions on the Property.

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby executes these Restrictive Covenants (the "Declaration") and declares that the Property is and shall be held, conveyed, hypothecated or encumbered, sold, used, occupied and improved subject to the covenants, conditions, uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter sometimes referred to as "Covenants and Restrictions") hereinafter set fourth.

### ARTICLE I. DEFINITIONS

Section I. Definitions- The following words, when used in this Declaration, shall have the following meanings;

- (a) "NWCNA" shall mean and refer to the Northeast Walnut Creek Neighborhood Association, a Texas non-profit association, comprised of all owners of the homes located in the area of real property which is located at 900 E. Braker Lane and is further described on Exhibit B attached hereto and incorporated herein by reference for all purposes.
- (b) "Building" shall mean and refer to any building or portion of a building situated upon the Property and designed and intended for use and occupancy for any Commercial purposes.

- (c) "City" shall mean and refer to the City of Austin, Texas.
- (d) "Declarant" shall mean and refer to and include only THOMAS C CALHOON, and any successor or assigned thereof to whom he expressly conveys or otherwise transfers all of his right, title, and interest in the Property without reservation of any kind, and transfers, sets over and assigns all of his right, title and interest under this Declaration, or any amendment or modification thereof.
- (e) "Property" shall mean and refer to all real property described in Exhibit "A" attached hereto.

## **ARTICLE II** **BUILDING**

**Section 1. CS-1 Zoning.** Zoning Shall be a voluntary Roll Back within 60 days Of Changing of Ownership of said Suite.

**Section 2.**  
**Conditional Use Permit Buildings** located 900 E. Braker Lane shall be limited to a 2 yr Authorization renewable only to Mr. Judson Greene.

**Section 3. Compliance with Applicable Ordinances** In all respects, the Property shall comply with all zoning ordinances and building codes of the City, specifically including, without limitation, requirements of the City limiting the number of occupants that may be on premises at any time. Property and all traffic requirements. This declaration shall not in any manner restrict the right of the City Council or the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned, or enforcement of any applicable ordinances.

## **ARTICLE III** **MISCELLANEOUS**

**Section 1. Amendment** /this Declaration shall not be altered, amended or terminated by the Declarant without the prior written consent of NWCNA, which consent and approval shall not be unreasonably withheld, conditioned or delayed.

**Section 2. Duration** Unless amended or terminated in accordance with the provisions of Section 1 of this Article, the Covenants and Restrictions of this Declaration shall run with and bind the Property and shall insure to the benefit of and be enforceable by (i) Declarant, its successors and assigns, and any person acquiring or owning and interest in the Property . or (ii) NWCNA, for a term of two (2) years after the date of the recordation

RESTRICTIVE COVENANTS

STATE OF TEXAS

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF TRAVIS

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ARTICLE I.  
DEFINITIONS

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(b) **"Building"** shall mean and refer to any building or portion of a building situated upon the Property and designed and intended for use and occupancy for any Commercial purposes.

(c) **"City"** shall mean and refer to the City of Austin, Texas.

(d) **"Declarant"** shall mean and refer to and include only THOMAS C CALHOON., and any successor or assigned thereof to whom he expressly conveys or otherwise transfers all of his right, title, and interest in the Property without reservation of any kind, and transfers, sets over and assigns all of his right, title and interest under this Declaration, or any amendment or modification thereof.

(e) **"Property"** shall mean and refer to all real property described in Exhibit "A" attached hereto.

## ARTICLE II. BUILDING

Section 1. CS-1 Zoning Zoning Shall be a voluntary Roll Back within 60 days Of Changing of Ownership of said Suite.

Section 2. Conditional Use Permit Buildings located 900 E. Braker Lane shall be limited to a 2 yr Authorization renewable only to Mr. Judson Greene.

Section 3. All Parking shall be onsite or on property with C.O.A. approved shared parking agreement.

Section 4. Employees shall park in rear of Facility.

Section 5. Tenant agrees to provide a Minimum of (2) Security Guards when occupancy is more Than (150) people or more. Wednesdays and Saturday Nights shall have (2) Security Guards Standard.

Section 6. A Bond of Approximately \$5,000.00 shall be in place for (2) years.

Section 7. Compliance with Applicable Ordinances In all respects, the Property shall comply with all zoning ordinances and building codes of the City, specifically including, without limitation, requirements of the City limiting the number of occupants that may be on premises at any time. Property and all traffic requirements. This declaration shall not in any manner restrict the right of the City Council or the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned, or enforcement of any applicable ordinances.

## ARTICLE III. MISCELLANIOUS

**Section 1. Amendment** This Declaration shall not be altered, amended or terminated by the Declarant without the prior written consent of NWCNA, which consent and approval shall not be unreasonably withheld, conditioned or delayed.

**Section 2. Duration** Unless amended or terminated in accordance with the provisions of Section 1 of this Article, the Covenants and Restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by (i) Declarant, its successors and assigns, and any person acquiring or owning and interest in the Property, or (ii) NWCNA, for a term of two (2) years after the date of the recordation of this Declaration, after which time the said Covenant and Restrictions shall be automatically extended for successive periods of two (2) years each. During the term of these Covenants and Restrictions, they may be amended or terminated only by an instrument signed by the Declarant, or his designated successor(s) or assign(s), and by NWCNA, with any instrument evidencing such amendment or termination to be properly recorded in the Real Properties Records of Travis County, Texas.

**Section 3. Construction and Enforcement** The provisions hereof shall be liberally construed. If this Declaration or any word, clause, sentence, paragraph or part thereof shall be susceptible of more than one (1) conflicting interpretation, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. This Declaration inures to the benefit of NWCNA and NWCNA may enforce these Covenants and Restrictions by any proceeding at law or in equity against any person violating or attempting to violate any Covenant or Restriction, either to restrain or enjoin any violation, or to recover damages, or both. In the event that any proceedings shall be necessary to enforce these Covenants and Restrictions, the prevailing party in such matters shall be entitled to recover all costs and expenses incurred in such proceedings, including, without limitation, reasonable attorneys' fees. This Declaration is hereby declared to be a covenant running with the land and shall be fully binding upon all persons acquiring the Property, or any portion thereof, and any person by acceptance of title to the Property, or any person thereof, shall thereby agree and covenant to abide by and fully perform the foregoing Covenants and Restrictions.

**Section 4. Severability** If any covenant, term or condition of this Declaration is held to be invalid or Unenforceable, the remainder of this Declaration or the application of such term, covenant, or condition shall not be affected thereby.

**EXECUTED AND EFFECTIVE as of \_\_\_\_\_**

**State of Texas**  
**County of Travis**

**DECLARANT:**

**Sworn to and subscribed**  
**before me on \_\_\_\_\_**

**State of Texas**  
**County of Travis**

**Northeast Walnut Creek**  
**Neighborhood Association**

**Sworn to and subscribed**  
**before me on \_\_\_\_\_**

**By: \_\_\_\_\_**

**Title: \_\_\_\_\_**  
**\_\_\_\_\_**